In the High Court of Judicature at Madras

Dated:27.02.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.669 OF 1997

1. Andalammal
2. Ramasamy Chettiar ..Appellants/Defendants

v

N.V.Muthusami ..Respondent/Plaintiff

This second appeal is filed under section 10 CPC against the judgment and decree dated 6.3.1997 made in A.S.No.22 of 1996 on the file of the Court of Subordinate Judge, Erode confirming the decree and Judgment in O.S.No.357 of 1995 dated 11.12.1995 on the file of the Court of District Munsif-cum-Judicial Magistrate, Perundurai.

For Appellants : Mr.P.Saravana Sowmiyan
for M/s Muthumani Doraisamy

For Respondent : Ms.P.T.Asha
for Sarvabhuman Associates

JUDGMENT

This appeal has been preferred against the Judgment and decree in A.S.No.22 of 1996 on the file of the Court of Subordinate Judge, Erode. The defendants, who have lost their defence before the Courts below, are the appellants herein.

2. The averments in the plaint in brief for the purpose of deciding this appeal sans irrelevant particulars are as follows:
The suit property is an ancestral property of the plaintiff situate in Ponmudi Village, Perundurai Taluk. During the life time of the father of the plaintiff, the first defendant had entered into an oral agreement of lease with the father of the plaintiff agreed to pay a monthly rent of Rs.10/- and occupied the suit house for her residential purposes. It was a monthly lease. The first defendant has agreed to pay the rent on the first of every English calender month. The first defendant was paying the rent to the suit house for nearly five years till the death of his father. Afterwards, the first defendant has committed default in payment

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of rent to the plaintiff. From March 1986, the first defendant was committing default in payment of rent to the plaintiff and inspite of several oral demands for payment of the rent, the first defendant did not care to pay the rent. Hence as on 1.3.1987, the arrears of rent comes to Rs.120/-. The plaintiff came to know that the first defendant had applied to the Revenue authorities of Perundurai Taluk to grant patta of site on which the suit house has been put up by her. On 14.3.1987, the plaintiff issued a registered notice through his lawyer to the first defendant, calling upon her to pay the arrears of rent and to vacate the house and to deliver the vacant possession of the suit house to the plaintiff. The said notice was received by the first defendant on 17.3.1987. The first defendant neither paid the arrears of rent nor deliver the vacant possession of the suit house. The first defendant has not chosen to send any reply to the suit notice issued by the plaintiff on 14.3.1987. Hence the suit for declaration of title and recovery of possession.

3. The first defenant has filed a written statement with the following averments:

There was no oral agreement entered into between the plaintiff and the first defendant in respect of the suit house situate in the suit property for a monthly rent of Rs.10/- as alleged in the plaint. It is false to say that the first defendant was paying the rent regularly till the death of the plaintiff's father and thereafter committed default. There is no arrrears of rent much less Rs.120/- as on 1.3.1987. The first defendant has not applied to the Revenue authorities for grant of patta in respect of the suit property. The plaintiff has no title to the suit property. The second defendant had put up the building in the suit property and has been assessed to house tax for the same. The assessment Number is 178 of Ponmudi Panchayat. The door Number of the house in the suit property is 2/48 C. It is a separate property of the second defendant. Hence the suit is liable to be dismissed.

4. The second defendant in his written statement would contend that there was no agreement of lease in between the plaintiff and the second defendant. The second defendant has not committed any default in payment of rent. The second defendant has built up his house in the Government Natham Poramboke and the same was acknowledged by the Revenue people of Perundurai Taluk. The house has been assessed by the Ponmudi Village Panchayat under assessment Number 170. The door Number for the suit house is 2/48C. There is no cause of action. Hence the suit is liable to be dismissed.

5. The first defendant in his additional written statement would contend that the plaintiff has no right, title or possession in respect of the suit property.

6. On the above pleadings, the learned trial Judge has framed four issues and one additional issue for trial. The plaintiff has examined

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himself as P.W.1 and also exhibited Exs A1 and A7. On the side of the defendants, D.W1 to D.W.3 were examined and Exs B1 to B5 were marked. A Commissioner was appointed in this case and his report is Ex C1 and plan is Ex C2.

7. After considering both the oral and documentary evidence let in before the trial Court, the learned trial Judge meticulously has come to a conclusion that the plaintiff is entitled to the declaration and recovery of possession as prayed for and accordingly decreed the suit, giving a months time to the defendants to vacate the house and to hand over the possession. Aggrieved by the Judgement of the learned trial Judge, the defendants have preferred an appeal in A.S.No.22 of 1996 before the Subordinate Judge, Erode, who after due deliberation has come to a conclusion that there is no merit in the appeal and accordingly dismissed the appeal and thereby confirming the decree and judgment of the trial Court. Hence the second appeal.

8. The substantial questions of law involved in this appeal are

" 1. Whether the Courts below erred in granting declarity relief when the documents adduced by the respondent do not convey title over the suit propeprty?
2. Whether the judgment and decrees of the Courts below are perverse in not having properly appreciated oral and documentary evidences?

9. Heard Mr.P.Saravana Sowmiyan, learned counsel appearing for the appellants and Ms. P.T.Asha, learned counsel appearing for the respondent and considered their respective submissions.

10.The Points:

The learned counsel appearing for the appellants focus the attention of this Court to plaint schedule property which is 0.05.5 hectares of land in G.S.No.151/21 with a thatched shed comprised in an extent of 11 feet x 15 feet. The learned counsel would contend that to prove his title in the suit property, the plaintiff has filed Ex A3 sale deed dated 26.4.1991 which stands in the name of the father of the plaintiff viz., C.Vijayapuri Gounder and that under Ex A3, the property sold to Vijayapuri Gounder was in Survey No.209/B measuring 4 acres 52 cents and that is not the property scheduled to the plaint. To show the survey number property scheduled to the plaint and the property sold under Ex A3 in favour of the plaintiff's father are one and the same,the plaintiff has produced Ex A4 copy of the Settlement register,to show that the new survey number for old survey No.209/B is S.Nos.151/10,151/11,151/12.151/14,151/17 and 151/21. The old survey number has been subdivided into re-survey numbers 151/10,151/11,151/12.151/14,151/17 and 151/21 and under column No.11 in EX A4, it has been mentioned that the owner of the said old survey number 209/B is the plaintiff's father C.Vijayapuri Gounder. The total extent in old survey No.209/B purchased by the plaintiff's father under Ex A3 is 4 acres 52 cents and survey No.151/21 is an extent of 0.05.5 hectares under Ex A4.

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11. Against the case of the plaintiff, the case of first defendant is that she is not residing in the suit property but she is residing in a nathamporamboke land in Door No.2/48C. A Commissioner was appointed to note down the physical features of the suit property. The Commissioner in his plan Ex C2 has shown the suit hut in re-survey No.151/21. So it is clear from Ex C1 and Ex C2 that the first defendant's hut is not in a Nathamporamboke land, but in Survey No.151/21. The plaintiff has issued Ex A1 notice for payment of an arrears of rent of Rs.120/- and also for recovery of vacant possession. The said notice was acknowledged by the first defendant under Ex A2. But the first defendant has not chosen to send any reply to ExA1 notice. On the other hand, first defendant as D.W.1 would deny that the left thumb impression in Ex A2 does not belong to her. To prove
this, the first defendant has not taken any steps to send Ex A2 for comparison of the disputed thumb impression therein with an admitted thumb impression by an expert. Exs A5 and A6 revenue records also show that Survey No.151/21 belongs to the father of the plaintiff. Under such circumstances, the Courts below have concurrently held that the plaintiff is entitled to the relief asked for under the plaint. Under such circumstances, I do not find any reason to interfere with the well considered findings of the first appellate Judge in A.S.No.22 of 1996 on the file of the Court of the Subordinate Judge, Erode which is neither infirm nor illegal to warrant any interference from this Court. Points are answered accordingly.

12. In fine, the appeal is dismissed , confirming the decree and Judgment of the first appellate Court in A.S.No.22 of 1996 on the file of the Court of Subordinate Judge, Erode, with costs.

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Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge,Erode.
2. The District Munsif-cum-Judicial Magistrate,perundurai.
3. The REcord Keeper, V.R. Section, High Court, Chennai.
+ One cc to M/s Sarvabhuman Associates SR 11954
+ One cc to Mr. Muthumani Doraisami Advocate SR 12568
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